National Guard Bureau
Directorate for Equal Opportunity

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OVERVIEW

- THIS MANUAL PROVIDES EEO COUNSELORS WITH INFORMATION AND TECHNIQUES REQUIRED TO RESOLVE ALLEGATIONS OF DISCRIMINATIONS.

KEY AREAS OF COVERAGE

a. Responsibilities of EEO officials.
b. Role of the Counselor.
c. Legal definitions of discrimination.
d. Identifying complaint basis and issues.
e. Resolution strategies.
f. Effective interviewing.
g. Preparing the counseling report.
h. Techniques for facilitating resolution.

DUTIES OF THE EEO COUNSELOR

1. ADVISE THE COMPLAINANT ABOUT THE EEO COMPLAINT PROCESS UNDR NGR (AR) 690-600/NGR (AF) 40-1614. VOL II, AND POSSIBLE ELECTION REQUIREMENTS:

2. DETERMINE THE ISSUE(S) AND BASIS(ES) OF THE POTENTIAL COMPLAINT.

3. CONDUCT A LIMITED INQUIRY FOR THE PURPOSES OF PROVIDIN INFORMATION FOR SETTLEMENT EFFORTS AND MEETING ADMINISTRATIVE REQUIREMENTS IF A FORMAL COMPLAINT IS F

DUTIES OF THE EEO COUNSELOR (Continued)

4. SEEK RESOLUTION OF THE MATTER AT THE LOWEST POSSIB LEVEL.

5. DOCUMENT THE RESOLUTION OR ADVISE THE COMPLAINT C HIS/HER RIGHT TO FILE A FORMAL DISCRIMINATION COMPL IF RESOLUTION FAILS.

6. PREPARE A REPORT SUFFFICIENT TO DETERMINE THAT REQ COUNSELING ACTIONS HAVE BEEN TAKEN.

ROLE OF THE EEO COUNSELOR

THE CRITICAL LINK

- **THE EEO COUNSELOR IS THE CRITICAL LINK FOR UNCOVERING FACTS LEADING TO AN ALLEGATION OF DISCRIMINATION.**

- **EEO COUNSELORS ANTICIPATE AND CAPTURE EVERY OPPORTUNITY FOR INFORMAL RESOLUTION.**

- **FACTUAL INFORMATION THAT IS DEVELOPED, COMMUNICATED, AND ACTED UPON, ENHANCES OPPORTUNITIES FOR RESOLUTION.**

TO BE EFFECTIVE, YOU MUST BE ABLE TO:

1. **IDENTIFY THE ISSUE(S).**
2. **DEVELOP FACTUAL INFORMATION.**
3. **COMMUNICATE THIS INFORMATION.**
4. **FACILITATE THE DEVELOPMENT OF RESOLUTION POSSIBILIT**

TO THE EXTENT THAT YOU ARE ABLE TO CARRY OUT THESE DUTIES EFFECTIVELY, YOUR STATE WILL BE IN A POSITION TO-

- **MEET REGULATORY REQUIREMENTS**
- **EXERCISE GREATER CONTROL OVER THE COSTS AND DISRUPTIVE EFFECTS OF PROLONGED COMPLAINT PROCESSING.**
- **ENSURE THAT COUNSELING REPORTS ARE ACCUATE AND RELEVANT.**
- **ENHANCE OPPORTUNITIES FOR RESOLUTION.**

ROLE OF THE EEO COUNSELOR (CONTINUED)

Be in control of yourself and the process And demonstrate that you know what you Are doing.

Educator

(a) You are often the first contact and primary source of informat

(b) You must be able to explain the complaint process, including your role as an EEO Counselor.

(c) You must be able to explain what is involved after the informa pre-complaint stage.

(d) You must be able to inform everyone of their rights and responsibilities.

ROLE OF THE EEO COUNSELOR (CONTINUED)

Facilitator

(a) You may act as a facilitator of discussions between complainant and state officials. (b) Your goal is to e that the parties are focused on the issues in the dis

(c) You should assist each person in understanding the other's point of view.

ROLE OF THE EEO COUNSELOR (CONTINUED)

Importance of the Counselor's Approach

1. BE OBJECTIVE AND IMPARTIAL.
2. HAVE AN OPEN MIND.
3. BE PATIENT, OPTIMISTIC, EMPATHETIC, AND SELF CONFIDENT.
4. SHOW THE PARTIES THAT YOU UNDERSTAND HOW THEY FEEL.
5. BE WILLING TO LISTEN.
6. BE REALISTIC, RECOGNIZING WHEN RESOLUTION IS NOT POSSI

ROLE OF THE EEO COUNSELOR (CONTINUED)

Suggestion Maker

(a) You may need to explore various solutions by posing hypothetical questions.

(b) You should work with authorities (SEEM, HRMO), etc. Do not make suggestions or suggest compromises.

ROLE OF THE EEO COUNSELOR (CONTINUED)

Translator

(a) You must be able to discuss procedures and regulations in words that ev can understand.

(b) You must be able to articulate each party's concerns in language that is understood.

Messenger

(a) The Counselor maintains discussions with both sides by taking informati and forth between the parties.

(b) Often the situation is such that initially the parties should not communic negative, controversial or potentially volatile information in a way that objective and neutral.

EEO LAWS, REGULATIONS & PROCEDURES

Current Requirements

a. To effectively provide EEO counseling, you must possess basic knowledge of anti-discrimination laws and regulation that govern EEO counseling and federal sector complaint processing.

b. Basic EEO responsibilities of Federal agencies are set forth in the following laws

(1) The Equal Pay Act of 1963.
(2) Title VII of the Civil Rights Act of 1964.
(3) The Age Discrimination in Employment Act of 1967
(4) The EEO Act of 1972
(5) The Rehabilitation Act of 1973 (as amended by the Americans with Disabilities Act of 1990).
(6) The Civil Service Reform Act of 1978.
(7) The Civil Rights Act of 1991.

Title VII of the Civil Rights Act of 1964

Sec. 703(a)
It shall be an unlawful employment practice for an employer organization or employment agency)-

a. To fail or refuse to hire or to discharge any individ
To discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employme because of such individual's race, color, religion, gender, or national origin.

Title VII Civil Rights Act of 1964

- Prohibits Discrimination Based Upon

- Race - National Origin - Color - Religion - Sex

Title VII of the Civil Rights Act of 1964 (Continued)

b. Title VII prohibits discrimination against individuals basis of race, color, national origin, gender (sex) or religion.

Note: NGB elected to substitute the term gender for sex (as in the law) to avoid problems that are sometimes created wh discrimination is not differentiated from sexual harassment t a form of discrimination.

c. Coverage

(1) Race (membership in any of the following racial

(a) Asian/Pacific Islander; can trace origins to th continent of Asia excluding the Middle East) or t Pacific Islands.

Title VII of the Civil Rights Act of 1964 (Continued)

(b) Black; can trace origins to the continent of Africa (excluding the non-black groups of Northern Afric

(c) Native American; can trace origins to the original people of North America by meeting Bureau of Ind Affairs criteria or tribal affiliation.

(d) White; can trace origins to the continent of Europe the Middle east of the non-black groups of Norther

(2) Color. The color of an individual's skin. Discrimination b upon color may occur independent of racial discriminatio

(3) National origin. Refer to an individual's (or His/Her ance place of origin, physical, cultural or linguistic characteris that are associated with a particular national or ethnic gr

Title VII of the Civil Rights Act of 1964 (Continued)

(a) Any identifiable national origin or ethnic group covered under this category.

(b) The term Hispanic covers a range of national origin group.

(4) Sex. Distinctions based upon gender (male or femal

(a) A 1978 amendment to Title VII (The Pregnancy Discrimination Act) includes discrimination based pregnancy, childbirth or related medical condition illegal forms from of sex discrimination.

(b) EEOC guideline (1980) define sexual harassme illegal form of sex discrimination.

(c) Sexual orientation is not included under the provisions of Title VII.

Title VII of the Civil Rights Act of 1964 (Continued)

(5) Religion. Based upon 1972 amendments to Title V

(a) Religion is not limited to membership in orth denominations.

(b) Organizations must attempt to accommodate religious needs of employees and applicants.

The Age Discrimination in Employment Act (ADEA) of 1967

- Prohibits Discrimination Based Upon Age for Individuals 40 Years or Older

Under the ADEA, it is unlawful for employers to discriminate i employment matters solely on the basis of age.

a. Coverage is limited to individuals who are forty years ol or older.

b. Individuals under the age of forty are not covered by the ADEA.

c. Mandatory retirement ages and maximum ages for hiring purposes are allowable under the Act. The emplo must show the requirement is job related or exists for reasons of business necessity.

The Rehabilitation Act of 1973

No otherwise qualified individual with a disability shall, solel reason of his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination und any program or activity conducted by an Executive agency o the US Postal Service.

Rehabilitation Act of 1973 Prohibits Discrimination Based Upon Disability

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Physical

Mental

-Requires Reasonable Accommodation

The Rehabilitation Act of 1973 (Continued)

a. Coverage is limited to individuals who possess a ph mental impairment that limits them significantly with respec or more major life activities (seeing, talking, walking, etc.) n associated with working.

Chemical dependency (alcohol and drug addiction) is include the meaning of disable. (Note: Current users of illegal drug included in this definition as amended by the Americans with Disabilities Act of 1990.)

Note: The term's disability and persons with disabilities have replac the terms handicap and handicapped person (originally in law and regulation) as a result of the influence of the Americans with Disabilities Act of 1990.

The Rehabilitation Act of 1973 (Continued)

b. Employers are required to take reasonable steps to accommodate the needs of qualified persons with disabilities who experience difficulties in meeting job requirements.

**Accommodation is not required if it would impose an "undue hardship"
on the operation of the employer's organization. Undue hardship
is defined as an action requiring significant difficulty or expense
when considered in light of factors such as an employer's size, financial
resources and the nature and structure of its operations.**

**An employer is not required to lower quality or production standards
to make an accommodation**

The Rehabilitation Act of 1973 (Continued)

c. Employers are required to use the Affirmative Acti program for Employees with Disabilities to increase b the number and percentage of disabled employee in t workforce.

d. Section 504 of the Rehabilitation Act require acces for disabled persons to participate in or benefit from programs, activities and services of the organization. includes architectural/physical accessibility concerns. recommending modifications in accordance with stan or reviewing plans and designs for new construction f adherence to existing standards.

The Civil Rights Act of 1991

- Provides Additional Rights to Individuals
Filing Claims of Intentional Discrimination
- Recovery of Damages
- Jury Trials

The purpose of this legislation was to nullify seven US Supreme Court decisions handed down between 1989 and 1991. Members of Congress voting for the Act considered the rights laws. The Act did not broaden the coverage of the Civil Rights Act of 1964, the ADEA, the Rehabilitation Act or the Americans with Disabilities Act. It added the following two provisions applicable to those laws.

a. Victims of discrimination are entitled to jury trials and receiving of compensatory damages.

(1) Any party may demand a trial by jury.

(2) Limitations (up to $300,000) have been set for the

The Civil Rights Act of 1991 (Continued)

Mental anguish, loss of employment of life and other non-pecuniary issues.

(b) Make whole remedies (e.g., back pay) and attorney's fee may be paid in addition to damages.

b. Employers are prohibited from making test score adjustments or using different cut-off based on race, color, gender (sex) or national origin.

Note: Private sector employers may also be liable for punitive damage

Other Requirements (Continued)

b. The Equal Pay Act of 1963.

This law prohibits paying workers of one gender (sex) at a rate that is different from the other gender (sex) when the work is the same. This prohibition also covers fringe benefits, overtime, sick and vacation leave, insurance, profit sharing and just about any tangible form of compensation that can be identified.

c. The EEO Act of 1972.

All personnel actions shall be free from discrimination.

(1) Amended Title VII to include the executive branch and

Other Requirements (Continued)

(2) Require Federal agencies to show that personnel actions are free from discrimination.

(3) As a result of this law, individuals may file suit in the courts against Federal agencies for discriminatory practices.

d. The Civil Service Reform Act (CSRA) of 1978. CRSA defines Federal personnel management requirements and prohibitions.

(1) CSRA require employees and applicants for employment receive fair and equitable treatment in all aspects of

Other Requirements (Continued)

e. The American with Disabilities Act

(1) The American with Disabilities Act of 1990 covers employers with 15 or more employees. It prohibits private employers, state local government, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, fir advancement, compensation, job training, and othe terms, conditions and privileges of employment.

Other Requirements (Continued)

(3) Employers may not as job applicants about existence, nature or severity of a disability. Applicants may be a about their Ability to perform specific job functions.

(4) The ADA amended the Rehabilitation Act by eliminating Coverage of employees and applicants currently enga in the illegal use of drugs (when an employer acts on the ba such use).

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Other Requirements (Continued)

f. Freedom from Reprisal

(1) Any person who files a complaint or otherwi
participates in the complaint process, shall be free fr
restraint,
interference, coercion, discrimination or reprisal at a
of the
processing of the complaint or thereafter.

(2) NGB employees having responsibility for pr
complaints of discrimination shall be free from restra
interference, coercion, discrimination pr reprisal.

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Pre-complaint Processing

- **Determining The Claim(s)**

1. Fragmentation
2. Identifying the claim(s)

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Pre-complaint Processing

- Determining The Basis(es)
- When The Basis(es) Is Not Covered By The EEO Regulation
- Conducting The Inquiry
- Seeking Resolution

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Pre-complaint Processing

- **Issuing the Notice of Final Interview**

1. Right to Pursue the Claim Through the Formal Process

2. Requirements of the Formal Complaint

3. Name(s) of Person(s) Authorized to Receive Complaints

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Pre-complaint Processing

- **Issuing the Notice of Final Interview**

4. File may be seen by persons needing access/confidentiality lost during formal Process

5. Provide Written Notice to Aggrieved Person of right to file a Discrimination Complaint

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Pre-complaint Processing

- **Election of the ADR Program**

1. Election between EEO Counseling and ADR

2. Completing the ADR Process

3. Confidentiality of Negotiations for

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Pre-complaint Processing

- **Election of the ADR Program**

4. Preparing the EEO Counselors Report when no ADR resolution

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- Time Limits

- Dissatisfaction with the Processing of a previously filed complaint

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- **EEO COUNSELORS REPORT**

- Contents of Reports